

KRISTEN CLARKE
Assistant Attorney General for Civil Rights
CARRIE PAGNUCCO
Chief
MEGAN K. WHYTE DE VASQUEZ
Deputy Chief
ARIELLE R. L. REID
ALAN A. MARTINSON
KATHERINE A. RAIMONDO
Trial Attorneys
Housing and Civil Enforcement Section
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
Tel: (202) 598-1575

PHILLIP A. TALBERT
United States Attorney
EMILIA P. E. MORRIS
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Tel: (559) 497-4000

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEL LYNN NOLEN; SHIRLEE NOLEN;
NOLEN PROPERTIES, LLC; NANCY
CANALE, as trustee of the Bernard Canale
and Nancy Canale 1998 Revocable Trust; and
BERNARD CANALE, by and through his
successor in interest NANCY CANALE.

Defendants.

Case No: 2:23-cv-00320-JAM-CKD

**JOINT MOTION AND ORDER TO
PERMIT DEPOSITIONS FOLLOWING
THE CLOSE OF THE DISCOVERY
PERIOD**

Plaintiff United States of America and Defendants Joel L. Nolen, Shirlee Nolen, Nolen
Properties, LLC, Nancy Canale, as trustee of the Bernard Canale and Nancy Canale 1998

1 Revocable Trust, and Bernard Canale, by and through his successor in interest Nancy Canale,
2 stipulate and move the Court as follows:

3 On September 14, 2023, the Court entered a Pretrial Scheduling Order (ECF 44)
4 (“Scheduling Order”). The Scheduling Order was subsequently modified on March 5, 2024
5 (ECF 52), and June 18, 2024 (ECF 60). Under the current schedule, the discovery period ends
6 on September 30, 2024. The parties will have completed all discovery by September 30, with
7 the exception of three depositions, as set forth below.

8 The parties request the Court modify the current Scheduling Order, ECF 60, to allow the
9 depositions of Defendant Joel Nolen and defendants’ rebuttal expert Adam Howard to occur
10 after the close of discovery on September 30. Additionally, the parties request that, if the United
11 States’ Motion for a Protective Order (ECF 70) is denied, the Rule 30(b)(6) deposition of the
12 United States be allowed to occur after the close of discovery.

13 **A. Deposition of Adam Howard**

14 On August 16, 2024, Defendants Joel Lynn Nolen and Shirlee Nolen (the “Nolen
15 Defendants”) served their Disclosure of Rebuttal Experts, which included a report from Mr.
16 Adam Howard. On September 3, 2024, Plaintiff served a notice of deposition of Mr. Howard,
17 setting a deposition date of September 23, 2024. On September 5, 2024, counsel for the Nolen
18 Defendants indicated that Mr. Howard was not available on September 23. Counsel for the
19 Nolen Defendants indicated that Mr. Howard was available on October 9 or 10, 2024. The
20 parties do not believe that taking Mr. Howard’s deposition after the September 30, 2024, close of
21 discovery will have any adverse effect on the current case schedule. The parties do not
22 anticipate that Mr. Howard’s testimony will be relevant to any dispositive motions.

23 Therefore, the parties request that the Court modify the Scheduling Order to allow Mr.
24 Howard’s deposition to take place no later than October 10, 2024.

25 **B. Deposition of Joel Nolen**

26 On July 24, 2024, counsel for the United States contacted all defense counsel by email to
27 inquire about their availability the week of September 9, 2024, for the depositions of Joel and
28 Shirlee Nolen. On August 6, 2024, counsel for the Nolen Defendants confirmed that September

1 10 and 11, 2024 worked for the depositions of Joel and Shirlee Nolen. On August 9, 2024, the
2 United States properly noticed Shirlee Nolen's deposition for September 10, 2024, and Joel
3 Nolen's deposition for September 11, 2024. On September 10, 2024, the United States took the
4 deposition of Shirlee Nolen. During defense counsel's questioning of Mrs. Nolen that evening at
5 the end of her deposition, counsel stated for the first time that Joel Nolen would not appear for
6 his deposition the following day. Counsel objected to the questioning of Mr. Nolen based on his
7 right against self-incrimination, in light of a criminal proceeding pending against Mr. Nolen in
8 Lassen County Superior Court.

9 On September 11, 2024, the United States appeared for the noticed deposition of Mr.
10 Nolen. Neither Mr. Nolen nor his counsel appeared for the deposition. Later that morning,
11 counsel held an informal telephonic discovery conference with Chief Magistrate Judge Delaney,
12 who directed the parties to try to reach an agreement regarding Mr. Nolen's deposition and, if no
13 resolution was reached, to file a Motion to Compel and/or Motion for a Protective Order
14 pursuant to Local Rule 251. *See* ECF No. 62.

15 On September 19, 2024, counsel for the Nolen Defendants offered to allow Mr. Nolen to
16 sit for a deposition on October 1, 2024, with conditions. Counsel for the United States
17 responded that it could not agree to the conditions and was not available for a deposition on
18 October 1 but would be available on October 7 or 8, 2024. On September 23, 2024, the parties
19 agreed to take the deposition of Defendant Joel Nolen on October 8, 2024. The parties agreed
20 that, to the extent Mr. Nolen would like to invoke his Fifth Amendment right against self-
21 incrimination, he may do so on a question-by-question basis. The parties also agreed that if any
22 dispute arises regarding the scope of Mr. Nolen's invocation of the Fifth Amendment, they will
23 not object to raising that dispute with the Court during or after the deposition on the grounds that
24 the dispute is untimely.

25 The parties do not believe that taking Mr. Nolen's deposition after the September 30,
26 2024, close of discovery will have any adverse effect on the current case schedule. The parties
27 do not anticipate that Mr. Nolen's rescheduled deposition will delay the filing of any currently
28 contemplated dispositive motions. Therefore, the parties request that the Court modify the

Scheduling Order to allow Defendant Joel Nolen's deposition to take place no later than October 8, 2024, and further order that disputes regarding the invocation of the Fifth Amendment during that deposition may be raised with the Court after the close of discovery.

C. Rule 30(b)(6) Deposition of the United States

On September 10, 2024, Defendants Joel Nolen and Shirlee Nolen served a Notice of Taking Deposition of Plaintiff's Person Most Knowledgeable on the United States. On September 13, 2024, counsel met and conferred regarding the topics noticed for the deposition.

On September 20, 2024, the United States filed a motion for a protective order, seeking to prevent the Rule 30(b)(6) deposition of the United States. The parties have stipulated to the shortening of time pursuant to Local Rule 144(e) and have sought a hearing on the motion by September 25, 2024. *See* ECF 71.

The parties do not believe that taking the Rule 30(b)(6) deposition of the United States, if ordered to occur, after the September 30, 2024, close of discovery will have any adverse effect on the current case schedule. The parties do not anticipate that any such testimony will be necessary in order to file any currently contemplated dispositive motions.

Therefore, the parties request that the Court modify the Scheduling Order, ECF 60, to allow the Rule 30(b)(6) deposition of the United States to take place after the close of discovery, if such a deposition is ordered to occur by Chief Magistrate Judge Delaney.

RESPECTFULLY SUBMITTED,

For the United States:

DATED: September 30, 2024

PHILLIP A. TALBERT
United States Attorney
Eastern District of California

/s/ Emilia P. E. Morris
EMILIA P. E. MORRIS
Assistant United States Attorney

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

/s/ Arielle R. L. Reid
CARRIE PAGNUCCO
Chief
MEGAN K. WHYTE DE VASQUEZ
Deputy Chief
ARIELLE R. L. REID

ALAN A. MARTINSON
KATHERINE A. RAIMONDO
Trial Attorneys

For the Defendants:

DATED: September 30, 2024 SIERRA LAW CENTER, APC

By: /s/ Jacob Zamora
JACOB ZAMORA
Attorneys for Defendant
NOLEN PROPERTIES, LLC

DATED: September 30, 2024 LEWIS BRISBOIS BISGAARD &
SMITH LLP

By: /s/ Jeffrey E. Schultz
JOHN S. POULOS
JEFFREY E. SCHULTZ
Attorneys for Defendants JOEL NOLEN
and SHIRLEE NOLEN

DATED: September 30, 2024 JACOBS, ANDERSON, POTTER, HARVEY
AND CECIL LLP

By: /s/ Andrea Wieder
DOUG JACOBS
ANDREA WIEDER
Attorneys for Defendants NANCY
CANALE and BERNARD CANALE

ORDER

Good cause appearing, and the parties having stipulated,

IT IS HEREBY ORDERED that

1. Plaintiff United States of America may conduct the deposition of Mr. Adam Howard by October 10, 2024, notwithstanding the close of discovery on September 30, 2024.
2. Plaintiff United States of America may conduct the deposition of Defendant Joel Nolen by October 8, 2024, notwithstanding the close of discovery on September 30, 2024.
3. Defendants Joel Nolen and Shirlee Nolen may conduct the Rule 30(b)(6) deposition of the United States after September 30, 2024, if so ordered with respect to the United States' Motion for Protective Order.
4. Any disputes regarding Mr. Nolen's invocation of the Fifth Amendment during his deposition may be raised with the Court after the close of discovery.

IT IS SO ORDERED.

Dated: September 30, 2024

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE